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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

SEP 22 2003

File: WAC-01-217-53363 Office: California Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ him as an associate/intern pastor.

The acting director denied the petition stating that the petitioner had not established that the beneficiary was performing the duties of an ordained pastor for at least the two years preceding the filing of the petition.

On appeal, the petitioner's counsel argues that the petitioner had requested the approval of an "Associate/Intern Pastor", not a pastor. Counsel further states that the Bureau has previously considered non-ordained pastors such as youth ministers as qualifying religious workers.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issue to be addressed in this proceeding is whether the beneficiary was continuously carrying on the vocation or work for at least the two years preceding the filing of the petition.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

When the petition was filed on April 24, 2001, the beneficiary was offered the job of associate/intern pastor. During the course of these proceedings, the beneficiary was ordained on November 4, 2001, and the job offer changed to that of head pastor. On appeal counsel for the petitioner argues that the job originally offered the beneficiary was a religious occupation rather than a job within the vocation of minister.

Since the job offered changed to minister of religion during the course of these proceedings, clearly the beneficiary does not qualify as he has not been solely engaged as a minister during the required time period. Even if the job offered is considered a religious occupation, the beneficiary still does not qualify as he was not continuously carrying on the job of associate/intern pastor. The record indicates that during the qualifying time period, the beneficiary was a fulltime student from the fall of 1999 through the fall of 2000. The petitioner has not established that the beneficiary was continuously carrying on the vocation or work for at least the two years preceding the filing of the petition. For this reason, the petition may not be approved.

Beyond the decision of the acting director, regulations at 8 C.F.R. § 204.5(m)(4) state that the petitioner must submit a job offer showing how the alien will be remunerated and must demonstrate that he will not be dependent on supplemental employment. It is noted that the beneficiary is married with two dependent children. Here, the record is not sufficient in demonstrating that the beneficiary could subsist without resorting to supplemental employment. In

addition, the petitioner has not demonstrated its the ability to pay a qualifying wage by submitting such documentation as the church's federal tax returns, annual statements, or audited financial statements pursuant to 8 C.F.R. § 204.5 (g)(2). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.